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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICARDO MIRANDA,

Defendant.

Case No. 2:20-cr-169-JAD-BNW

STIPULATION TO VACATE
PRELIMINARY HEARING IN
SUPERVISED RELEASE
REVOCATION PROCEEDINGS
[ECF No. 29]

The United States of America, through Jason M. Frierson, United States Attorney, and Daniel J. Cowhig, Assistant United States Attorney, and the defendant Ricardo Miranda, by and through his counsel, Lance A. Maningo, Maningo Law, stipulate and agree and move this Honorable Court to vacate the preliminary probable cause hearing in defendant's supervised release revocation proceedings, currently set for Tuesday, May 21, 2024 at 11:00 a.m. before the Honorable United States Magistrate Judge Elayna J. Youchah. ECF No. 26.

The parties make this stipulation because "[i]t is well settled law in the Ninth Circuit that a probationer is not entitled to a preliminary hearing when he is already in custody at the time of revocation proceedings for a crime committed while he was under supervision. *See United*

1 *States v. Diaz-Burgos*, 601 F.2d 983, 984-85 (9th Cir. 1979) (per curiam). In *Diaz-Burgos*, the
 2 defendant had been convicted of illegally reentering the United States after having been
 3 previously deported. While he was on probation for that offense, he again illegally entered the
 4 United States and was arrested. Thereafter, his probation was revoked. The defendant appealed,
 5 arguing the revocation violated his due process rights. The Ninth Circuit rejected his claim. The
 6 Court held “we do not agree with [defendant’s] contention that it was necessary to provide him
 7 with a preliminary probable cause hearing as was required in *Gagnon v. Scarpelli*, because
 8 [defendant] was already in custody at the time of the revocation proceeding by reason of a
 9 second re-entry prosecution.” *Id.* at 984-85 (internal citation omitted).” *United States v. Flores-*
 10 *Perez*, No. 07CR1477-L, 2010 WL 1328580, at *2 (S.D. Cal. Apr. 1, 2010).

11 Defendant Miranda was detained pending trial in *United States v. Ricardo Heriberto*
 12 *Miranda*, also known as *Pee-Wee*, 2:24cr94-JCM-EJY, on April 30, 2024. ECF Nos. 8 and 13 in
 13 Case No. 2:24cr94. As defendant Miranda was already in custody and remains in custody in
 14 another matter, he is not entitled to a preliminary hearing in this revocation matter.

15 The parties respectfully request this Honorable Court issue the attached proposed Order
 16 to accomplish these ends.

17 Respectfully submitted this May 15, 2024.

18 Counsel for Defendant
 19 RICARDO HERIBERTO MIRANDA

JASON M. FRIERSON
 United States Attorney

20 //s// Lance A. Maningo
 21 LANCE A. MANINGO
 Maningo Law

//s// Daniel J Cowhig
 DANIEL J. COWHIG
 Assistant United States Attorney

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~~PROPOSED~~
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendant Miranda was detained pending trial in *United States v. Ricardo Heriberto Miranda, also known as Pee-Wee*, 2:24cr94-JCM-EJY, on April 30, 2024. ECF Nos. 8 and 13 in Case No. 2:24cr94. As defendant Miranda was already in custody and remains in custody in another matter, he is not entitled to a preliminary hearing in this revocation matter. *United States v. Diaz-Burgos*, 601 F.2d 983, 984-85 (9th Cir. 1979) (per curiam); *United States v. Flores-Perez*, No. 07CR1477-L, 2010 WL 1328580, at *2 (S.D. Cal. Apr. 1, 2010).

ORDER

IT IS HEREBY ORDERED, on the stipulation of the parties and good cause appearing therefor, that the preliminary probable cause hearing in defendant's supervised release revocation proceedings, currently set for Tuesday, May 21, 2024 at 11:00 a.m., is vacated.

IT IS SO ORDERED this May 16, 2024.


THE HONORABLE ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE